

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BRENDA K. HURSTON,

Case No. 1:01-cv-313

Plaintiff,

Magistrate Judge Timothy S. Black

vs.

BUTLER COUNTY DEPARTMENT OF  
JOBS AND FAMILY SERVICES,

**ORDER GRANTING MOTION  
TO PROCEED *IN FORMA*  
*PAUPERIS* ON APPEAL**

Defendant.

This matter is before the Court on plaintiff's motion for leave to proceed *in forma pauperis* on appeal pursuant to 28 U.S.C. § 1915. (Doc. 155).

A party that desires to proceed *in forma pauperis* on an appeal must typically file a motion with the district court and attach an affidavit explaining why the court should allow her to do so. *See* Fed. R. App. P. 24(a)(1). That requirement is waived, however, when that same party had received prior approval to proceed *in forma pauperis* in the district court. Fed. R. Civ. P. 24(a)(3). Rule 24(a)(3) states:

A party who was permitted to proceed *in forma pauperis* in the district court action . . . may proceed on appeal *in forma pauperis* without further authorization, unless the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed *in forma pauperis*.

Fed. R. App. P. 24(a)(3).

Plaintiff was permitted to proceed *in forma pauperis* in the district court action. (Doc. 5). Since that time, the Court has not certified that an appeal of this action would not be taken in good faith. Although the Court remains fully satisfied that summary judgment was properly granted against plaintiff, the Court is not prepared to rule that her appeal in this matter is legally

“frivolous” as that term has been defined by the Supreme Court. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Therefore, the Court concludes that plaintiff’s appeal is taken in “good faith” for purposes 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3). Accordingly, the Court therefore **GRANTS** the motion and hereby authorizes appeal of this action without prepayment of fees or costs.

A copy of this Order shall be sent to the Clerk of the Sixth Circuit Court of Appeals.

**IT IS SO ORDERED.**

Date: 10/17/2005

s/Timothy S. Black  
Timothy S. Black  
United States Magistrate Judge